



U. S. Fish and Wildlife Service

## Emergency Designation of an Additional Federal Manatee Protection Area in Lee County Frequently Asked Questions

Updated December 2004

**Q1: Why are you designating an emergency manatee protection area a third time?**

A1: The Service has decided to re-establish this emergency rule in order to provide for protection of these areas during the normal rulemaking process and to allow for adequate time for public hearing and comments on the proposed designation. The third designation is a result of delays caused by several hurricanes in the state of Florida this year.

The Service believes this third emergency designation will protect manatees from imminent take and avoid a lapse in protection while the final rule is developed.

**Q2: What is your legal authority to establish manatee refuges?**

A2: The authority to establish protection areas for the Florida manatee is provided by the *Endangered Species Act* and the *Marine Mammal Protection Act*. The Service may establish manatee protection areas, also known as sanctuaries or refuges, whenever there is substantial evidence showing that these areas are necessary to prevent take of one or more manatees.

**Q3: Will the public have an opportunity to participate in the emergency designation process?**

A3: No. Under an emergency designation, the process is expedited because there is clearly an immediate danger to a listed species.

However, the public has the opportunity to comment on the concurrent proposal to make the emergency designation permanent. That process was announced on August 6, 2004, along with the date and location for a public meeting. Because of the storm events that passed over peninsular Florida between August and October, the public hearing was rescheduled for January 12, 2005, in Fort Myers, Florida.

**Q4: Why does the Service intend to make these emergency designations permanent?**

A4: Regulations require the Service to initiate the process to make these Federal designations permanent within 10 days of publishing the Emergency Designation rule. In accordance with these regulations, we published a proposed rule to make this designation permanent in the Federal Register on August 6, 2004. There is an opportunity for stakeholders and the general public to provide comment on the proposal. Once that process is complete, the Service will then issue its final decision. If the State or local government re-instates the protection zones, the Service will consider withdrawing its proposal.

**Q5: As the result of this third emergency designation, will the Service continue to re-evaluate permits in Lee County that were previously denied by the U.S. Army Corps of Engineers because of inadequate protection for the manatee?**

A5: Yes. With these manatee protection areas in place and when sufficient law enforcement efforts are underway, the Service will continue to re-evaluate permits.

**Q6: What will the Service do if the State eventually re-designates its previous manatee protection zones? What if the county takes similar action?**

A6: If any of these scenarios occurs, the Service will consider withdrawing its Federal designation of the five areas as a Federal manatee refuge.

**Q7: When will the emergency designation take effect?**

A7: The Federal emergency designation is effective immediately.

**Q8: How will the areas be marked?**

A8: The signs designating the former State zones have been updated to reflect the Federal designation, however, a number of signs need to be reinstalled or replaced as a result of the recent hurricane events. Additional signs may be put in place to better delineate the Federal refuge if the emergency designation becomes permanent.

**Q9: What about state exemption holders such as commercial fishermen and fishing guides?**

A9: There are no provisions for allowing these exemptions under Federal law. Business and individuals previously holding State exemptions in these areas should be aware that they are not valid in the Federal zones. This is the only difference between the Federal designation and the previous State designation.

**Q10: What are the next steps in the process?**

A10: The Service has proposed a permanent manatee refuge designation in these five areas. Currently, we have reopened the public comment period, which will close on February 2, 2005, after which the Service will assess these comments before making a final decision.

**Q11: Where is the Federal manatee refuge located?**

A11: The areas affected by this emergency designation are in Lee County, in the vicinity of Matlacha Pass, Estero Bay, southwest side of Pine Island, eastern San Carlos Bay and the mouth of the Caloosahatchee River. These areas correspond exactly to the previous manatee protection zones established by the State of Florida.

A highly detailed description of the boundaries of the Pine Island-Estero Bay Manatee Refuge can be found in today's *Federal Register*. It is also available at the South Florida Ecological Service Field Office web site: [verobeach.fws.gov](http://verobeach.fws.gov).

The regulation and additional information on this action is also available on the South Florida Ecological Service's web site at [verobeach.fws.gov](http://verobeach.fws.gov), or may be requested by writing via e-mail to [verobeach@fws.gov](mailto:verobeach@fws.gov); by faxing your request to (772) 562-4288; or by letter to USFWS, Attn: MPA Emergency Designation, 1339 20<sup>th</sup> Street, Vero Beach, FL 32960. If you have specific questions or need special assistance, please contact the South Florida Ecological Services Office at (772) 562-3909.

**Q12: The County Court of the 20<sup>th</sup> Judicial Circuit Court in and for Lee County, Florida did not invalidate the State's restrictions of 25-mph in the channels. Why are these areas included in the Service's emergency designation?**

A12: Encompassing all the areas, including the channels, will make it easier to post and less confusing to the boating public.

**Q13: How is “slow speed” defined in these regulated areas?**

A13: “Slow speed” is defined as “the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. [However,] a watercraft is NOT proceeding at slow speed if it is – (1) on plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft IS proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.” Protection areas may also carry a channel qualifier, exempt or included. In such instances this refers to the existing marked navigational channel.

**Q14: What is a manatee refuge?**

A14: Manatee refuges are areas where certain waterborne activities may be restricted or prohibited to prevent injuring or killing one or more manatees. Waterborne activities that may be restricted include, but are not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling operations. For an area designated as a manatee refuge, the regulation will state which, if any, waterborne activities are prohibited, and state the applicable restrictions. Designation of manatee refuges will not eliminate waterfront property owner access rights. Any authorized boating activity in the refuges must be conducted by operating watercraft at slow speed and maintenance activities would be allowed, subject to any Federal, State or local permitting requirements.

**Q15: What is “take”?**

A15: “Take”, as defined by the Endangered Species Act, means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.”

- The Service defines “harass” as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.
- The Service defines “harm” to include significant habitat modification or degradation that actually results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding or sheltering.

Manatees also receive Federal protection under the Marine Mammal Protection Act, which is administered by the National Oceanic and Atmospheric Administration, or NOAA. This act has similar definitions of take and harassment.

**Q16: Will this emergency designation of a manatee protection area affect property rights?**

A16: No. Designation of manatee refuges will not eliminate access rights for property owners on waterways. Public and private property owners and their designees would be permitted watercraft access. Any authorized boating must be conducted at slow speed in the refuge area, as posted.

**Q17: Will designation of a site as a manatee refuge restrict my access to Florida’s waterways?**

A17: Manatee protection areas are not intended to create blanket access restrictions to Florida’s waterways. However, there would be some level of impact. The types of prohibited or restricted waterborne activities and the schedules for them will vary from site to site and may be seasonal in nature. In all cases, manatee refuges will not eliminate waterfront property owner access rights.

**Q18: Do you consider economic and quality-of-life impacts on citizens when making final site selection?**

A18: Yes. The Service considers waterway access, impact on commercial and recreational waterway uses, as well as community economic impacts in reaching final decisions. Under the emergency designation process, these factors can be considered as long as the basic purpose of the emergency site designations – reducing or eliminating the take of manatees – is achieved.

**Q19: Are you singling out watercraft as the only cause of manatee mortality?**

A19: No. The Service acknowledges that watercraft-related mortality is not the only cause of manatee deaths. It is, however, the number one cause of human-related manatee deaths. There have been 12 watercraft-related manatee deaths in Lee County since January 2004; four of the dead manatees were recovered within the areas affected by the court ruling and this emergency designation, and three more were found in close proximity to these areas. Manatee protection areas offer us an opportunity to implement sound, effective risk-reduction management actions. Adult survival rates are one of the key criteria the Service considers in evaluating the success of recovery efforts. Establishing this protection area is expected to have a significant effect on overall adult manatee survival rates.

**Q20: Does the Fish and Wildlife Service have enough people to post and enforce these areas?**

A20: Yes. The Service is committed to posting and enforcing any manatee protection area that it designates. In addition, the State has also committed to increasing its law enforcement efforts for manatee protection.